



The Attorney General of Texas

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Honorable Joe Resweber
Harris County Attorney
1001 Preston, Suite 634
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Opinion No. MW-71

**Re: Duty of district clerk to file
exhibits in criminal proceedings.**

Dear Mr. Resweber:

You ask if the district clerk of Harris County is required to file exhibits received in evidence during criminal proceedings in the same manner as those received during civil proceedings.

The Texas Rules of Civil Procedure provide:

The court reporter or stenographer shall file with the clerk of the court all exhibits which were admitted in evidence or tendered on bill of exception during the course of any hearing, proceeding or trial.

Tex. R. Civ. Proc. rule 75a.

The Texas Code of Criminal Procedure now provides:

Each clerk of the district or county court shall receive and file all papers and exhibits in respect to criminal proceedings. . . .

Code Crim. Proc. art. 2.21, as amended by Acts 1979, 66th Leg., ch. 119, at 212.

These provisions assign district clerks the ministerial duty to file exhibits in both civil and criminal proceedings. It is well settled that district clerks may be assigned additional duties by proper authority. Carter v. Missouri, K & T Ry. Co of Texas, 157 S.W. 1169 (Tex. 1913); Lytle v. Halff, 12 S.W. 610 (Tex. 1889). See Tex. Const. art. V, § 9; V.T.C.S. art. 199(11); 12 Tex. Jur.2d Clerks of Courts §§ 10 - 12 at 143.

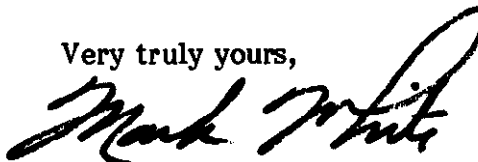
In our opinion the district clerk is now required to file exhibits received in evidence in criminal proceedings as well as those received in civil proceedings. Where any firearm or contraband is received by the clerk

as an exhibit in a criminal proceeding, he has the option of placing it in the hands of the sheriff for safekeeping. Code Crim. Proc. art. 2.21(b). Under rule 75b(b) of the Rules of Civil Procedure, exhibits may be withdrawn upon certain conditions by the court reporter or stenographer without a court order, but we believe the Code of Criminal Procedure contemplates that in all instances other than the placement of exhibits with the sheriff for safekeeping, the clerk is to retain possession of the exhibits at all times and release them only to the person or persons authorized by the court in which such exhibits have been received. The statute puts the sheriff, when acting as safekeeper of exhibits, under the same duty. See Code Crim. Proc. arts. 18.19 (seized weapons), 18.18 (contraband). Cf. Tex. R. Civ. Proc. rule 14b (motion for disposition of exhibits); Code Crim. Proc. art. 38.02 (applicability of civil rules); Attorney General Opinion C-177 (1963) (access to records of criminal proceedings).

S U M M A R Y

The district clerk is required to file exhibits received in evidence during criminal proceedings as well as those received during civil proceedings.

Very truly yours,



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